

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

**IN RE: TRI-STATE CREMATORY  
LITIGATION**

**MDL DOCKET NO. 1467**

FILED IN CLERK'S OFFICE  
OCT - 8 2003  
*Dzm*

**This Order relates to:**

**ALL CASES**

By: *M. H. [Signature]*  
Deputy Clerk

**MOTION FOR RELIEF FROM AUGUST 16, 2002 ORDER  
WITH SUPPORTING AUTHORITY**

COME NOW Tracy City Funeral Home, LLC d/b/a Foster & Lay and Westfield Insurance Company and move the Court for relief from the August 16, 2002 Order requiring the funeral home defendants (and their insurers) to pay a pro rata share of "expenses incurred and fees earned by liaison and lead counsel", showing as follows:

Tracy City Funeral Home, LLC d/b/a Foster & Lay began doing business on or about March 29, 2001. Westfield Insurance Company has provided liability insurance coverage for that entity since March 29, 2001. A true and correct copy of the subject declarations page is attached hereto and marked Exhibit "A".

Only three bodies were sent to Tri-State Crematory by Tracy City, LLC d/b/a Foster & Lay - Hildegard Pickett, Frederick Lynn Craig and Rebecca Laird. Hildegard Pickett has effectively opted out of the class action and is pursuing an independent action in Grundy County, Tennessee. Westfield Insurance Company, on behalf of its insured, has reached a settlement with the lawyers representing the class with respect to the remaining two decedents, Frederick Lynn Craig and Rebecca Laird. In open court on Friday, August 29, 2003 the terms of the settlement were announced to the

Court and the Court indicated that the settlement appeared reasonable. The parties are in the process of having the necessary settlement documents completed. However, in light of the settlement, the aforesaid Defendant and its insurance carrier do not intend to participate any further in the defense of this action. Therefore, they request relief from any further contribution toward settlement of the lead/liaison counsel fees and expenses and/or any expenses incurred jointly by the funeral home Defendants for the same reasons set forth in the Motion for Relief from the August 16, 2002 Order filed by Defendants Prime Succession, Inc., Prime Succession Holdings, Inc., Prime Succession of Tennessee, Inc. and Buckner/Rush Enterprises, Inc. dated August 15, 2003. Counsel respectfully submits that the "cutoff" date for its participation should be no later than the August 29, 2003.

WHEREFORE, Tracy City Funeral Home, LLC d/b/a Foster & Lay and its insurer, Westfield Insurance Company, respectfully pray that they have relief from the Court's August 16, 2002 Order as aforesaid.

Respectfully submitted,

PENNA & MENDICINO, P.C.

BY:



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CHRISTOPHER E. PENNA  
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**Businessowners**  
☐ STANDARD POLICY  
☒ SPECIAL POLICY

P.O. Box 5001 One Park Circle  
 Westfield Center, Ohio 44251-5001

☒ NEW DECLARATIONS ☐ RENEWAL DECLARATIONS

**1. Named Insured and Mailing Address**

(No., Street, City or Town, County, State, Zip Code)

TRACY CITY FUNERAL HOME LLC  
 DBA FOSTER & LAY FUNERAL HOME  
 PO BOX 247  
 MONTEAGLE TN 37356

Agency No.: 41-1241

Agent: TRADEMARK INSURANCE AGENCY

Town: MONTEAGLE

State: TN

Renewal of: NEW

Policy Period: From 03/29/01

To 03/29/02

at 12:01 A.M. Standard Time at your mailing address shown above.

Named Insured is: ☐ Individual ☐ Partnership ☐ Corporation ☒ Other LIMITED LIAB. CO.

Business of the Named Insured FUNERAL HOME

WIC Account Number: 4100458664 (Q)

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

**SCHEDULE**

Described premises: (Enter "same" if same location as in Item 1)  
 COLYAR ST, TRACY CITY, TN 37387

PROPERTY COVERAGES		LIMITS OF INSURANCE
Building <input checked="" type="checkbox"/> Replacement Cost Value <input type="checkbox"/> Actual Cash Value		\$ 250,000.
Business Personal Property (Replacement Cost Value)		\$ 50,000.
Loss of Income as stated in the Policy Provisions is Included.		
Money & Securities (Special Policy)		
	Inside Premises	\$ 5,000.
	Outside Premises	\$ 2,500.
Building Limit - Automatic Increase 8 %		
<b>LIABILITY AND MEDICAL EXPENSES</b>		
Liability and Medical Expenses	Each Occurrence	\$ 1,000,000.
Medical Expenses	Each Person	\$ 5,000.
<b>FIRE LEGAL LIABILITY</b> (any one fire or explosion)		\$ 50,000.
Except for Fire Legal Liability, each paid claim for the above coverages reduces the amount of insurance we provide during the applicable annual period. Please refer to Paragraph D.4. of the Businessowners Liability Coverage Form.		
<b>OPTIONAL COVERAGES</b> (Coverage is afforded only when designated by an "X":)		
( ) Hired Auto and Non-Owned Auto Liability	Each Occurrence	\$
( ) Employee Dishonesty		\$
( ) Forgery and Alteration		\$
( ) Outdoor Signs		\$
( ) Tenant's Exterior Building Glass		\$
( ) Burglary & Robbery (Standard Policy) Money & Securities:	Inside Premises	\$
	Outside Premises	\$
( ) Mechanical Breakdown		\$
( ) Accounts Receivable		\$
( ) Valuable Papers & Records		\$
(X) EXPANDED PROPERTY COVERAGE		\$
( )		\$
( )		\$
( )		\$
( )		\$
( )		\$
\$ 1,000. Deductible		
\$ 250. Optional Coverage/Exterior Building Glass Deductible		
<b>Mortgage Holders</b> (Name, Address, Zip Code)	<b>Businessowners Premium</b>	\$ 2,871.00
UNION PLANTERS BANK	<b>Additional Premium</b>	\$
PO BOX 500		\$
SHELBYVILLE TN 37162		\$
Policy forms and endorsements attached at inception, if any.		\$
SEE BP 12 05		\$
Countersigned: _____	<b>Total Annual Premium</b>	\$ 2,871.00
City and Date _____	By _____	
	Authorized Representative _____	

THIS DECLARATIONS PAGE WITH POLICY JACKET, BUSINESSOWNERS POLICY FORM AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES YOUR POLICY

**EXHIBIT A**

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IN RE: TRI-STATE CREMATORY  
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CERTIFICATE OF SERVICE

This is to certify that I have this date served upon counsel for the opposing parties in the foregoing matter with a copy of the Motion for Relief from August 16, 2002 Order With Supporting Authority by placing same in the United States Mail, postage prepaid, addressed as follows:

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This 2 day of OCT., 2003.

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